

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

CRIMINAL NO. 1:15CR20-2
(Judge Keeley)

JAMES VARNER, Jr.,

Defendant.

ORDER ACCEPTING AND ADOPTING MAGISTRATE JUDGE'S
OPINION/REPORT RECOMMENDATION CONCERNING PLEA OF
GUILTY IN FELONY CASE AND SCHEDULING SENTENCING HEARING

On April 10, 2015, defendant, James Varner, Jr. ("Varner"), appeared before United States Magistrate Judge John S. Kaull and moved for permission to enter a plea of GUILTY to Count Three of the Indictment. Varner stated that he understood that the magistrate judge is not a United States District Judge, and consented to pleading before the magistrate judge. This Court had referred the guilty plea to the magistrate judge for the purposes of administering the allocution pursuant to Federal Rule of Criminal Procedure 11, making a finding as to whether the plea was knowingly and voluntarily entered, and recommending to this Court whether the plea should be accepted.

Based upon Varner's statements during the plea hearing and the government's proffer establishing that an independent factual basis for the plea existed, the magistrate judge found that Varner was competent to enter a plea, that the plea was freely and voluntarily

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given, that he was aware of the nature of the charges against him and the consequences of his plea, and that a factual basis existed for the tendered plea. On April 10, 2015, the magistrate judge entered an Opinion/Report and Recommendation Concerning Plea of Guilty in Felony Case ("R&R") (dkt. no. 61) finding a factual basis for the plea and recommended that this Court accept Varner's plea of guilty to Count Three of the Indictment.

The magistrate judge also directed the parties to file any written objections to the R&R within fourteen (14) days after service of the R&R. The magistrate judge further directed that failure to file objections would result in a waiver of the right to appeal from a judgment of this Court based on the R&R. On April 13, 2015, the government, by Assistant United States Attorney Shawn A. Morgan ("Morgan"), responded to the R&R stating the government had no objection (dkt. no. 62). After which, Varner did not file any objections.

Accordingly, this Court **ADOPTS** the magistrate judge's R&R, **ACCEPTS** Varner's guilty plea, and **ADJUGES** him **GUILTY** of the crime charged in Count Three of the Indictment.

Pursuant to Fed. R. Crim. P. 11(e)(2) and U.S.S.G. § 6B1.1(c), the Court **DEFERS** acceptance of the proposed plea agreement until it

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has received and reviewed the presentence report prepared in this matter.

Pursuant to U.S.S.G. § 6A1 et seq., the Court **ORDERS** as follows:

1. The Probation Officer undertake a presentence investigation of **JAMES VARNER, JR.**, and prepare a presentence report for the Court;

2. The Government and Varner are to provide their versions of the offense to the probation officer by **May 8, 2015**;

3. The presentence report is to be disclosed to Varner, defense counsel, and the United States on or before **June 24, 2015**; however, the Probation Officer is not to disclose the sentencing recommendations made pursuant to Fed. R. Crim. P. 32(e)(3);

4. Counsel may file written objections to the presentence report on or before **July 8, 2015**;

5. The Office of Probation shall submit the presentence report with addendum to the Court on or before **July 22, 2015**; and

6. Counsel may file any written sentencing statements and motions for departure from the Sentencing Guidelines, including the

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factual basis from the statements or motions, on or before
August 5, 2015.

The magistrate judge continued Varner on bond pursuant to the
Order Setting Conditions of Release (dkt. no. 17) entered on
February 9, 2015.

The Court will conduct the sentencing hearing for the
defendant on **Thursday, August 13, 2015 at 9:30 A.M.** at the
Clarksburg, West Virginia point of holding court.

It is so **ORDERED.**

The Clerk is directed to transmit copies of this Order to
counsel of record, the defendant and all appropriate agencies.

DATED: April 24, 2015

/s/ Irene M. Keeley
IRENE M. KEELEY
UNITED STATES DISTRICT JUDGE